thing, namely $300 (dollars three hundred only) cash without consideration from one See Thin Beng, whom you knew to be likely to be concerned with your official function, and that you thereby committed an offence punishable under section 165 of the Penal Code."

He was found guilty on the alternative charge and sentenced to eight months' imprisonment. This appeal is against both conviction and sentence.

The only ground of appeal against conviction is that the appellant's counsel was never given an opportunity of addressing the court at the close of the case.

It would appear from the records that at the close of the case the learned President found the appellant guilty before his counsel could address the court. This was due purely to inadvertence on the part of the learned President and on his attention being drawn to it, by defence counsel, before sentence was passed he gave the latter an opportunity to make his submissions. Counsel however said: "I will not make a submission and I leave it to Your Honour". The learned President then made this finding: "I find accused guilty of the alternative charge and convict him". He then proceeded to sentence him. At the hearing of this appeal Mr. Chew for the appellant, who also appeared for him in the lower court, said that the learned President was wrong in finding the appellant guilty without giving him an opportunity of making an address. He also contended that although after having made the finding and on realising that counsel had not been given a chance to address, he then gave counsel this opportunity, the learned President having already made his finding could not alter such a finding notwithstanding any submissions on the part of counsel. It seems to me that Mr. Chew fails to appreciate the effect of section 272 of the Criminal Procedure Code which reads:—

"(1) No Court other than the High Court, when it has recorded its judgment, shall alter or review the same.

(2) A clerical error may be rectified at any time and any other mistake may be rectified at any time before the Court rises for the day."

It is clear that when the learned President first made his finding that the appellant was guilty, this finding was not final as the court had not arisen for the day. It was open to the learned President to call on defence counsel to make his submissions after such a finding and in the light of counsel's submissions to alter, if necessary, this finding. As defence counsel did not wish to avail himself of this opportunity, the learned President therefore convicted the appellant and imposed his sentence. In the circumstances I cannot see how it can be said that opportunity to address the court was denied to counsel. This ground of appeal therefore fails.

With regard to sentence, the appellant has a previous conviction for a similar offence committed on the same day as this offence. I see no reason to disturb the sentence.

The appeal is dismissed.

Appeal dismissed.

Solicitors: *Kam Woon Wah & Co.*

KIAW AIK HANG CO. LTD. v. TAN TIEN CHOY

[O.C.J. (Choor Singh J.) August 11, 1964]

[Singapore — Suit No. 1255 of 1960]

Hire-purchase — Car let by finance company to hirer — Hirer paying off and acquiring ownership of car — Hirer reselling car to finance company — Entry into second hire-purchase agreement — Money advanced by owner to hirer — Whether money-lending transaction — Whether bill of sale given by way of security — Whether void — Bills of Sale Ordinance (Cap. 22), s. 4(1).

Bills of sale — Hire-purchase agreement — Bill of sale given by way of security — Want of registration — Whether void.

Moneylending — Hire-purchase — Money advanced by owner to hirer — Whether moneylending transaction.

By a hire-purchase agreement in writing dated June 2, 1959 the plaintiffs, a finance company, let a taxi to the defendant, a taxi driver, on hire-purchase at the hire purchase price of $10,153.50. The defendant paid the initial payment on the same day and subsequently he paid 8 monthly instalments. On March 9, 1960 the defendant agreed to pay to the plaintiffs the total amount then due under the agreement and thereby acquire ownership of the car. He was then to sell the car back to the plaintiffs for $8,000. What happened in fact was that the plaintiffs deducted the amount of the remaining instalments less a rebate from the purchase price of $8,000 and paid the balance to the defendant in cash. On the same day the plaintiffs entered into a second hire-purchase agreement with the defendant under which the agreed hire-purchase price was $9,568. The defendant again made an initial payment and agreed to pay the balance by monthly instalments. There was a further transaction relating to the car between the parties on June 17, 1960, and the facts of this transaction were in dispute. However, the learned judge found that this third transaction did not affect the question of the ownership of the car.

The plaintiffs sought a declaration that they were the owners of the motor-car.

Held: (1) before the second hire-purchase agreement was entered into on March 9, 1960 the plaintiffs were the legal owners of the car but the defendant had an interest in it;

(2) the purchase of the car by the defendant on March 9, 1960, its resale to the plaintiffs and the repurchase on hire-purchase terms by the defendant were all part and parcel of one transaction which was a money-lending transaction. The defendant on that day had raised a loan upon the security of the car. The second hire-purchase agreement was therefore a bill of sale given by way of security for the payment of money by the defendant and was void in respect of the car for want of registration under the Bills of Sale Ordinance;

(3) the plaintiffs therefore remained the owners of the car under the first hire-purchase agreement.

Per Choor Singh J.: "In a genuine hire-purchase transaction there is no question of the owner of a chattel advancing money to its hirer. When money passes from the owner of the chattel to the hirer, no matter under what guise the transaction is clearly a money-lending transaction."

Cases referred to:—

(1) *Madel* v. *Thomas & Co.* [1891] 1 Q.B.D. 230.

(2) *Polsky* v. *S. and A. Services* [1951] 1 All E.R. 185.

(3) *Michael* v. *Soon Teck Finance Co.* [1962] M.L.J. 53.

SUIT.

K. S. Chung for the plaintiffs.

A. J. Braga for the defendant.

Cur. Adv. Vult.

Choor Singh J.: This is a suit brought by the plaintiffs, a finance company, against the defendant, a taxi-driver, for a declaration that the plaintiffs are the owners of a Holden motor-car, which is registered as No. SH. 4382, and delivery of all documents of title relating to the car. The defendant pleads that the car is his property and was wrongfully seized by the plaintiff company on the 27th July, 1960, and counter-claims for the return of the car or its value and damages for its detention.

The following facts are not disputed. By a hire-purchase agreement in writing dated the 2nd June 1959 the plaintiffs let the car to the defendant on hire-purchase, the hire-purchase price being $10,153.50 payable by an initial payment of $1,711.50 and 18 monthly instalments of $469 each. The defendant paid the initial payment of $1,711.50 on the same day and subsequently he paid eight monthly instalments of $469 each. On the 9th March 1960 there was another transaction between the parties. The defendant agreed to pay on that day to the plaintiffs the total amount then due under the hire-purchase agreement and thereby acquire ownership of the car. The defendant was then to sell the car back to the plaintiffs for $8,000. What happened in fact was that the plaintiffs deducted the amount of the ten remaining instalments less a rebate from the purchase price of $8,000 and paid $3,952 in cash to the defendant. On the same day the plaintiffs as owners of the car entered into a second hire-purchase agreement with the defendant. Under the second agreement the agreed hire-purchase price was $9,568.00. The defendant made an initial payment of $1,000 and agreed to pay the balance of $8,568.00 by 18 monthly instalments of $476 each.

There was a further transaction relating to the same car between the parties on the 17th June 1960. The facts of this transaction are in dispute.

The version given by the plaintiffs' manager is as follows. On that date the defendant agreed to pay the plaintiffs the amount then due under the second hire-purchase agreement and thereby acquire ownership of the car and then sell it back to the plaintiffs for $9,000. One Lim Boon Hin was to enter into a hire-purchase agreement with the plaintiffs in respect of the car. A hire-purchase agreement was accordingly entered into and signed by Lim as hirer and the defendant as surety. The defendant was given a cheque for $9,000 which he negotiated with the plaintiffs' cashier, who deducted the amount due under the second hire-purchase agreement from this sum of $9,000. The defendant signed a receipt for $9,000. At that time the car was registered in the name of the defendant. It was arranged between the plaintiffs and the defendant that the defendant should effect registration of the car in the name of Lim.

The version given by the defendant is as follows. Lim Boon Hin agreed to buy the car from the defendant for $9,000 but as he had only $1,000 Lim asked the defendant if he could find a person who would lend him $8,000. On the morning of the 17th June 1960 the defendant rang up Chong Kong Wee, the son of the plaintiffs' managing director, and asked him what was the amount due by the defendant to the plaintiffs under the second hire-purchase agreement. Chong replied that the balance due was in the region of $6,500. The defendant took the required amount and went to the plaintiffs' office the same morning. The defendant paid a cheque for $476 being the third instalment due under the second hire-purchase agreement. The defendant then asked Chong what rebate he would get if he paid the balance. Chong stated that he would be prepared to give a rebate of $1,128 and that the amount due less rebate was $6,062. The defendant paid $6,062 in cash and received a receipt for it. The registration book of the car and a blank notice of transfer form described as a "yellow form" were returned to the defendant. In the afternoon of the same day the defendant took Lim Boon Hin to see Chong. The defendant informed Chong that Lim wanted to borrow $8,000 in order to buy the defendant's car and handed Chong the registration book of the car. The defendant was given a cheque for $9,000 and asked to endorse it. He did so and signed a blank receipt form and a blank sale form. He then signed two copies of a blank hire-purchase agreement as surety which were then signed by Lim as hirer. The defendant also signed a blank "yellow form" which was a notice of transfer of ownership of motor vehicle and was to be sent to the Registrar of Vehicles; Lim also signed a similar blank "yellow form". The defendant then left the plaintiffs' office to fetch the car as Chong wanted to inspect it. When the defendant returned with the car, Chong on inspecting the car noticed several patches of

clay on the car and said that it was not worth $8,000. He wanted to deduct 10% for "football money" which the defendant understood to mean "coffee money". This led to an argument and Chong returned to the defendant the registration book relating to the car and the "yellow form" which the defendant had signed. The defendant tore the "yellow form" and left the plaintiffs' office with Lim.

On the 27th July 1960 the plaintiffs seized the car alleging that Lim was in breach of the hire-purchase agreement by failing to pay the first instalment due on the 17th July 1960, and claiming to be entitled under the agreement to repossess the car.

On examining the evidence I find that there is a conflict between the parties on three points. First, although both parties allege that the defendant purchased the car from the plaintiffs by paying the balance due under the second hire-purchase agreement, they are not agreed on the mode of payment. Secondly, it is alleged by the plaintiffs that the defendant sold the car back to them on that day: but the defendant denies this. Thirdly, the plaintiffs allege that a third hire-purchase agreement came into force on that day when Lim Boon Hin entered into a hire-purchase agreement with the plaintiffs in respect of the car, and the defendant signed the agreement as surety. Lim and the defendant admit signing this agreement but they allege that it never came into effect because this transaction fell through owing to the dispute over the payment of "football money".

I do not accept the defendant's evidence that on the 17th June 1960 he paid off the balance due under the second hire-purchase agreement by handing $6,062 in cash to the plaintiffs. He did not impress me as a truthful witness. The defendant stated that on the morning of the 17th June 1960 he paid the plaintiffs $476 by cheque and $6,062 in cash at about the same time and received receipts for both these payments. The plaintiffs produced the receipt books from which these receipts were issued, and an examination of the counterfoils of the receipts shows that after the receipt for $476 was issued, 43 other receipts were issued before the receipt for $6,062. Furthermore, the receipts for $6,062 is the last receipt issued on the 17th June 1960. These facts indicate that the story of the plaintiffs that the negotiations for the sale of the car took place in the afternoon is more likely to be true than the defendant's story that he paid $6,062 in the morning of the 17th June 1960.

I find that the negotiations for the sale of the car took place in the afternoon of the 17th June 1960, and that the plaintiffs agreed to buy the car from the defendant for $9,000. The plaintiffs signed the form acknowledging receipt of the sum of $6,062 from the defendant. They also signed another form acknowledging receipt of the sum of $1,000 from Lim. This sum was payable by Lim on the execution of the third hire-purchase agreement. The plaintiffs' manager maintained that this sum of $1,000 was in fact paid by Lim; but I accept the evidence of Lim that he did not pay this sum to the plaintiffs on that day. It seems to me that the parties intended that this sum should also be deducted out of the $9,000. In my view all the documents, receipts and other necessary papers were prepared on the basis that the sum of $6,062 and the sum of $1,000 would be deducted from the $9,000, and the balance of $1,938 would be paid to the defendant upon the completion of the third hire-purchase transaction. The car would then be the subject of a hire-purchase agreement between Lim and the plaintiffs and it was to be registered in the name of Lim. In my opinion the transaction fell through because of the refusal by the defendant to pay Chong a sum of $800 as "football money". The plaintiffs' manager testified that the cheque for $9,000 given to the defendant was negotiated by the defendant with the plaintiffs' cashier who is alleged to have deducted the sum of $6,062 due from the defendant under the second hire-purchase agreement and to have given the defendant a sum of $2,938 in cash. The cashier was not called as a witness by the plaintiffs. The plaintiffs' manager testified that this matter was within his personal knowledge. He was not present when the defendant is alleged to have negotiated the cheque with the cashier and it is not understood how the matter could be within his personal knowledge. A clerk (P.W.2) testified that he saw the defendant taking the cheque towards the cashier's room. Whether or not the defendant was paid anything on the cheque for $9,000 is a matter within the knowledge of the cashier and the defendant. The defendant testified that he never took the cheque for $9,000 to the cashier and never received anything on this cheque. The plaintiffs' manager testified that his cashier deducted $6,062 and paid $2,938 to the defendant. The plaintiffs' manager also testified that Chong had nothing to do with these negotiations; whereas the defendant testified that all the negotiations on the 17th June 1960 were between the defendant and Chong. The receipt for $6,062 given to the defendant by the plaintiffs bears the signature of Chong in two places. One of the signatures certifies the rebate of $1,128. This clearly shows that Chong was present there that afternoon and was concerned in these negotiations. Under the circumstances the evidence of the plaintiffs' manager is totally unreliable.

The plaintiffs relied on their account books to support their allegation that $2,938 was in fact paid to the defendant on the 17th June 1960.

The account books are of no assistance on this point because the entries in the account books merely repeat what is contained in the documents to which I have referred. In the absence of the evidence of the cashier who could have been called but was not called by the plaintiffs, I hold that the plaintiffs never paid anything to the defendant on the cheque of $9,000. I hold further that the defendant did not pay $6,062 out of his own pocket to the plaintiffs as claimed by him. In my opinion the result of the negotiations on the 17th June 1960 was that the sale of the car which was to provide the money for paying off the balance due under the second hire-purchase agreement did not in fact take place on that day and that the third hire-purchase agreement although it was signed by Lim and the defendant never came into effect.

It is true that both parties have in their pleadings admitted that the second hire-purchase agreement was extinguished on the 17th June 1960, when all monies due under it were fully paid up; but they disagree as to the mode of payment. The plaintiffs maintain that the second agreement was extinguished because they deducted $6,062, being the amount due under the second agreement, out of the $9,000 which they allege they paid the defendant for the purchase of the car. This is not accepted by the defendant whose story is that the plaintiffs did not pay him any sum whatsoever on that day and that he paid the plaintiffs out of his own pocket the sum of $6,062 in cash being the balance due on the second agreement. Each party has not only challenged the contention of the other, but has gone to great lengths to show that the story of the other party is completely false. Under the circumstances it would be absurd for the court to consider itself bound by the admissions contained in the pleadings. In my opinion it is the duty of the court to determine whether payment of the balance due under the second hire-purchase agreement was made in either the way alleged by the plaintiffs or the way alleged by the defendant. I find that payment of the balance due under the second hire-purchase agreement was in fact not made at all.

It was urged on behalf of the plaintiffs that as the defendant had signed a sale note (Ex. P.7) on the 17th June 1960 which clearly sets out the terms of sale of the car, the defendant was precluded by virtue of the provisions of sections 92 and 93 of the Evidence Ordinance from saying that he had not sold the car, and from giving oral evidence contradicting the sale note. The answer to this submission is that proviso 1 to section 93 provides that want of consideration may be proved to invalidate any document.

The question for the determination of this court is: Who is the owner of the car now? In view of my finding that no transaction affecting the ownership of the car took place on the 17th June 1960, the answer to the question depends upon the validity of the first and second hire-purchase agreements. In his rejoinder to the amended reply the defendant pleaded as follows:

> "The defendant in the alternative will further contend that the hire-purchase agreement of the 17th day of June, 1960, (referred to in paragraphs 2(d) and (e) of the amended reply) and all previous hire-purchase agreements in respect of the said car were only a sham and were not genuine hire-purchase transactions but that each of the said hire-purchase agreements is a cloak to cover loans to the defendant and the proposed loan to Lim Boon Hin and that each of these hire-purchase agreements constitutes a bill of sale which is void for non-registration under the Bills of Sale Ordinance (Cap. 22)".

Counsel for the defendant cited *Madel* v. *Thomas & Co.*; [1] *Polsky* v. *S. and A. Services*; [2] and *Michael* v. *Soon Teck Finance Co.*[3] in support of his submission that the court must disregard the form and look to the true nature of each transaction.

Section 4(1) of the Bills of Sale Ordinance (Cap. 22) provides as follows:—

> 4(1) Every bill of sale shall be duly attested and shall be registered under this Ordinance within three clear days after the execution thereof, and shall truly set forth the consideration for which it was given; otherwise the following consequences shall ensue:—
>
> (a) in the case of a bill of sale made or given by way of security for the payment of money by the grantor thereof, such bill of sale shall be void in respect of the personal chattels comprised therein;

Before the second hire-purchase agreement was entered into on the 9th March 1960 the plaintiffs were the legal owners of the car but the defendant had an interest in it. On that day the defendant agreed to pay to the plaintiffs the amount then due under the first hire-purchase agreement and to sell the car back to the plaintiffs for $8,000 and to re-purchase it on hire-purchase terms for $9,568 by making an initial payment of $1,000 and 18 monthly instalments thereafter of $476 each. What in fact occurred on that day was that the plaintiffs deducted the sum of $4,048 due under the first hire-purchase agreement and the sum of $1,000 being the initial payment under the second hire-purchase agreement from the purchase price of $8,000 and gave the defendant $2,952 upon his signing the second hire-purchase agreement. It is clear that the purchase of the car by the defendant on that day, its resale to the plaintiffs and the re-purchase on hire-purchase terms by the defendant were all part and parcel of one transaction which was clearly a money-lending transaction. The defendant on that day had raised a loan of $2,952 upon the security of the car. The second hire-purchase agreement was therefore a bill of sale given by way of security for the payment of money by the defendant and was void in respect of the car for want of registration under the

Bills of Sale Ordinance. In a genuine hire-purchase transaction there is no question of the owner of a chattel advancing money to its hirer. When money passes from the owner of the chattel to the hirer, no matter under what guise, the transaction is clearly a money-lending transaction. In my view the repayment of the amount due under the first hire-purchase agreement and the purchase of the car by the plaintiffs from the defendant on the 9th March 1960 was fictitious. All that happened on that day was that the defendant raised a loan of $2,952 on the security of the car in which he had an interest.

In my view the plaintiffs remain the owners of the car under the first hire-purchase agreement. There is no question of the Bills of Sale Ordinance being applicable to the facts of the first hire-purchase agreement. It was a genuine hire-purchase agreement in that the plaintiffs bought a new Holden car from the Singapore agents Messrs. Progress Motors Ltd. and hired it to the defendant on hire-purchase terms. For these reasons I hold that the car is the property of the plaintiffs. There shall be a declaration that the plaintiffs are the owners of the Holden Diesel Saloon car registered No. SH. 4382, Engine No. 7004178, Chassis No. FC. 8632P and 1 order that the defendant deliver to the plaintiffs all documents of title relating to the said car. The defendant's counterclaim is dismissed.

Judgment for the plaintiff.
Counterclaim dismissed.

Solicitors: *Hilborne, Chung & Co.*; *A. J. Braga.*

HAJI JUNUS v. CHIK & ANOR.

[O.C.J. (Suffian J.) September 21, 1963]

[Alor Star — Civil Suit No. 106 of 1957]

Land Laws — Fraud — Kedah Land Enactment No. 55 s. 43.

S, now deceased, was the registered proprietor of the land in dispute. After his death his widow, the 2nd defendant, sold half of the land to the plaintiff, received the full purchase price and let him into possession and agreed to transfer the half share to him after she had extracted letters of administration to the estate of the deceased. As she failed to do so the plaintiff sued her and the court ordered specific performance against her. After obtaining the judgment the plaintiff discovered that the land had on February 8, 1956 been registered in the 1st defendant's name. It was established as a fact that before February 8, 1956 the land was vested in the 2nd defendant, and two other persons to the extent of 34/48 shares and 7/48 shares each respectively and that the 1st defendant knew that half of it had been sold to the plaintiff. Nevertheless the 1st defendant bought a half share for $100 — the consideration expressed in the memorandum of transfer being untrue — and obtained a transfer of the whole property to himself on the understanding that he would transfer a half share to the plaintiff. The plaintiff now sought a declaration that he was entitled to half share in the land and that the first defendant be compelled to transfer that half share to the plaintiff.

Held: (1) the 1st defendant was guilty of fraud as he knew of the plaintiff's interest in the land and he succeeded in persuading the original owners to transfer the whole land to himself only because he had promised them that he would transfer a half share to the plaintiff;

(2) the 1st defendant, being party to a fraud and not being a *bona fide* purchaser for value, should not be allowed to keep the half share.

[**Editorial Note:** for the ruling on preliminary objections in this suit see [1963] M.L.J. 303.]

Cases cited in argument.

(1) *Gibbs* v. *Messer McIntyres & Creswell* [1891] A.C. 248.

(2) *Assets Co. Ltd.* v. *Mere Roihi & Ors.* [1905] A.C. 176.

(3) *Waimiha Sawmilling Co. Ltd.* v. *Waione Timber* Co. Ltd. [1926] A.C. 101.

(4) *Tueh Guat Choo* v. *Cheah Ah Hoe & Anor.* [1931 - 32] F.M.S.L.R. 317.

(5) *Bagher Singh* v. *Chanan Singh* [1961] M.L.J. 328.

(6) *Muruan etc.* v. *Jabol* [1962] M.L.J. 319.

CIVIL SUIT.

G. H. Goh for the plaintiff.

A. Jayadeva for the 1st defendant.

Cur. Adv. Vult.

Suffian J.: In this suit the question is whether or not Chik the first defendant's conduct amounts to "fraud" within the meaning of section 43 of the Kedah Land Code.

The facts as I find them are as follows.

Senawi, now deceased, was the registered proprietor of the land in dispute. After his death, his widow Mariam (the second defendant) sold half of the land to Haji Junus the plaintiff. Mariam received the full purchase price, let the plaintiff into possession (he has been in possession ever since) and agreed to transfer the half share to the plaintiff after she had extracted letters of administration to Senawi's estate.

She never did so and in 1954 the plaintiff sued her in Civil Suit No. 113 of 1954 and in 1957 the court ordered specific performance against her. But to this day the half share has not been transferred to the plaintiff.

After obtaining the above judgment the plaintiff discovered that the land had in 1956 been registered in Chik's name.

What had happened was as follows. On February 8, 1956 i.e. before the judgment, Mariam was registered as the proprietor of the land to the extent of 34/48, Ramlah to the extent of 7/48 and Saadiah to the extent of 7/48 share. This was in accordance with an order of this court in Originating Summons No. 347 of 1951.